

**DEPARTMENTAL INPUT**  
**CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION**

<input checked="" type="checkbox"/> <b>New contract</b>	<input type="checkbox"/> <b>OTR</b>	<input type="checkbox"/> <b>CO</b>	<input type="checkbox"/> <b>SS</b>	<input checked="" type="checkbox"/> <b>BW</b>	<input type="checkbox"/> <b>Emergency</b>	Previous Contract/Project No: R864-02-3
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<input type="checkbox"/> <b>Re-Bid</b>	<input type="checkbox"/> <b>Other</b>
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LIVING WAGE APPLIES: \_\_\_ YES ☒ NO

Requisition/Project No: BW9403-3/19

Term of Contract: 5 Years with 3 1 yr options-to-renew

Requisition/Project Title: LOCAL TELECOM SERVICES – VOICE & DATA (RQET1000012)

Description: To establish a replacement Bid Waiver contract for Countywide Local Telecom Voice & Data Services with AT&T Corp. This will replace current contract R864-02-3. Services acquired will be managed by ETSD based on Administrative Order (AO) 5-5. These services will include but are not limited to County support of Business and PBX Trunk Lines, Centrex, DSL, Frame Relay, Metronet Ethernet, Analog Data, 1-800 for 311 call center, T-1 Broadband circuits, and Reverse 911 services for MDPD.

User Department(s):	ETSD	Contact Person:	James D. Munn, Jr.	Phone:	305-375-1443
Issuing Department:	DPM	Funding Source:	Internal Service Funds		
Estimated Cost:	\$70,000,000				

**ANALYSIS**

Commodity/Service No: 725-56;		SIC:	
Trade/Commodity/Service Opportunities			
Contract/Project History of Previous Purchases For Previous Three (3) Years Check Here ___ if this is a New Contract/Purchase with no Previous History			
<b>EXISTING (2009-10)</b>		<b>2<sup>ND</sup> and 3<sup>RD</sup> YEARS (2007-09)</b>	
Contractor:	AT&T (Bell South)	AT&T (Bell South)	AT&T (Bell South)
Small Business Enterprise:	Not Applicable	Not Applicable	Not Applicable
Contract Value:	PO Releases: \$66,479	PO Releases: \$107,212	PO Releases: \$1,158,524
Comments: PO release value for Equip purchases Only – Services current a 'direct pay' model			
Continued on another page (s): ___ Yes <input checked="" type="checkbox"/> No			

**RECOMMENDATIONS**

SBE	Set-Aside	Sub-Contractor Goal	Bid Preference	Selection Factor
		%		
		%		
		%		
		%		

Basis of Recommendation:

Signed: James D. Munn, Jr.

Date to SBD: 08/08/2011

Date Returned to DPM: \_\_\_\_\_

**Contract No. BW9403-3/19  
LOCAL TELECOM SERVICES – VOICE AND DATA**

THIS AGREEMENT made and entered into as of the Effective Date as defined below, by and between AT & T CORP, a corporation organized and existing under the laws of the State of New York, having its principal office at One AT&T Way, Room 4A248, Bedminster, New Jersey 07921 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide necessary voice and data services, equipment, spare parts, technical training and maintenance support services for the County's TELECOMMUNICATIONS NETWORK INFRASTRUCTURE, in accordance with all attachments, associated addenda, incorporated herein by reference; and, the requirements of this Agreement; and,

WHEREAS, the Contractor has offered and submitted a set of schedules and prices for certain services, hereinafter referred to as "Contract Service Arrangement (CSA) Agreements" or "CSA Agreements" which are incorporated by reference as Attachment A, which incorporate AT&T's terms and conditions covering regulated telecommunication and network services and the associated pricing therein; and,

WHEREAS, the Contractor has offered the County non-regulated Network services, services to support telecommunication systems, fixed network equipment and installation services and related telecommunications professional services set forth in Attachment B subject to the terms and conditions set forth in applicable Pricing Schedules and or discount schedules and incorporated therein; and,

WHEREAS, the Contractor has offered and submitted a Pricing Schedule for services identified as Wholesale Digital Subscriber Line (DSL) Transport, hereinafter referred to as the "DSL Transport" or "DSL Services" which is incorporated by reference as Attachment C herein; and,

WHEREAS, the County currently desires to procure from the Contractor the services defined under the Federal Universal Services Fund program as "E-Rate" and regulated by the

Schools and Libraries Division ("SLD") of the Universal Service Fund Administrative Company ("USAC") that are referenced in Attachment D "E-Rate Rider," included as an illustrative reference, and in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, and all associated addenda and attachments, any Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean AT&T Corp., its Affiliates and, and their permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager where applicable under this Contract.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage special projects or mutually agreed change orders, extra work or additional work under the Contract.
- k) The words "Statement of Work" to mean a separate document to be developed by the County or Contractor to define special projects that may be executed by mutual agreement under the terms and conditions set forth in this Contract.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or

corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- n) The words "Acceptable Use Policy" means Contractor's Acceptable Use Policy ("AUP") which applies to Services provided over or accessing the Internet. The AUP may be found at [att.com/aup](http://att.com/aup), or other locations the Contractor may designate, attached as Exhibit 1 of this agreement for reference purposes, and is subject to change.
- o) The word "Affiliate" means any entity that controls, is controlled by, or is under common control with a party.
- p) The word "Damages" means collectively all injury, damage liability, loss, penalty, interest and expense incurred.
- q) The words "Effective Date" mean, for any Pricing Schedule, the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law
- r) The word "Guidebooks" means documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Guidebooks may be found at [att.com/servicepublications](http://att.com/servicepublications) or other locations the Contractor may designate
- s) The words "Minimum Payment Period" mean, in respect to any Service, the minimum period for which the County is required to pay recurring charges for the Service, as specified in the Pricing Schedules or Service Publication for that Service.
- t) The words "Pricing Schedule" mean an attachment that identifies the Services the Contractor may provide to the County, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect, ("Pricing Schedule Term") including all Contract Service Arrangement ("CSA") Agreements between the Contractor and the County.
- u) The words "Service Component" mean an individual component of a Service provided under this Agreement.
- v) The words "Service Guides" mean the description, pricing, and other terms and conditions for the Service not covered by a Tariff or Guidebook, which may be found at [att.com/servicepublications](http://att.com/servicepublications) or other locations the Contractor may designate.
- w) The words "Service Level" mean any express standards of performance applicable to Services and Equipment, as may be set forth in a Pricing Schedule.
- x) The word "Site" means the County's physical location, including the County's collocation space on the Contractor's, its Affiliate's, or subcontractor's property, where the Contractor installs or provides a Service.
- y) The words "Service Publications" mean collectively Pricing Schedules, Tariffs, Guidebooks, Service Guides and the Contractor's Acceptable Use Policy.
- z) The word "Tariffs" means the documents containing the standard descriptions, pricing,

and other terms and conditions for a Service that the Contractor files with regulatory commissions. Tariffs may be found at att.com/service publications or other locations the Contractor may designate.

- aa) The word "User" means employees of Miami-Dade County, or any duly authorized representative, who utilizes any services provided by the Contractor under this contract. The County accepts responsibility for County "Users" of any Contractual services, unless expressly provided to the contrary in applicable Service Publications. "User" shall not include any unauthorized party who in violation of law accesses or uses any services after Customer has taken all reasonable steps to prevent such unauthorized access or use.
- bb) The words "County Manager" shall mean County Manager, designee or other County administrator as may be officially named by the County during the term of this contract.
- cc) For the purposes of Article 32 and 40, under Exclusion of Charges the words "pass through" shall mean charges presented by the Contractor for payment associated with a County Ordinance, FCC or other regulatory mandate, 3rd party communications services, Federal or State access Tariffs, Surcharges collected on behalf of other municipalities, permit fees for special construction services or late payment or interest fees charges in accordance with the contract.

**ARTICLE 2. ORDER OF PRECEDENCE**

Except as set forth in a specific Pricing Schedule or Statement of Work with respect to the applicable service(s), the order of priority of the documents that form this agreement is as follows: 1) this Agreement; 2) Pricing Schedules (including CSA Agreements) or as referenced in Attachments A thru D; 3) any Statement of Work as may be mutually agreed by the parties for the execution of Special Projects supported by an individual County Purchase Order. 4) the AUP shown as Exhibit 1; and Tariffs, Guidebooks and Service Guides; provided that, Tariffs will be first in priority in any jurisdiction where existing law or regulation does not permit contract terms to take precedence over inconsistent tariff terms thereof to meet County requirements.,

**ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the Services as set forth in this Agreement, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder. All contracted services are subject to availability and operational limitations

of systems, facilities and equipment

- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be provided in conformance with the service description in the applicable Pricing Schedule, Service Guide, Tariff, or mutually agreeable Statement of Work, and is subject to the performance levels in any applicable Service Level Agreement.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding its purchase and use of the agreed Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective as of the effective date of the Resolution of the Board of County Commissioners approving this contract (the "Effective Date"). This contract shall remain in effect for five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract on a year-to-year basis, for a maximum total of three (3) additional years.

The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

- a) to the County Project Manager, Field Services Director and Chief Security Officer:

Miami-Dade County  
Enterprise Technology Services Department (ETSD)  
10300 Sunset Drive - 2nd Floor, Suite 450  
Miami, Fla. 33173

Attention: John Concepcion, Field Services Director  
Phone: (305) 596-8368  
Fax: (305) 596-8889  
E-mail: [JNC@miamidade.gov](mailto:JNC@miamidade.gov)

Attention: Lars Schmekel, Chief Security Officer  
Phone: (305) 596-8779  
E-Mail: [Lars.Schmekal@miamidade.gov](mailto:Lars.Schmekal@miamidade.gov)

- and,  
b) to the ETSD IT Business Office (ITBO)  
Enterprise Technology Services Department (ETSD)  
5680 SW 87<sup>th</sup> Ave  
Miami, Fla. 33182

Attention: Julian Manduley, ITBO  
Phone: (305) 596-8610  
Fax: (305) 275-7696  
E-mail: [JMANDUL@miamidade.gov](mailto:JMANDUL@miamidade.gov)

- and,  
c) to the DPM Contract Manager:

Miami-Dade County  
Department of Procurement Management (DPM)  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: James D. Munn, Jr., Procurement Contracting Officer  
Phone: (305) 375-1443  
Fax: (305) 375-5688  
E-mail: [munn@miamidade.gov](mailto:munn@miamidade.gov)

**(2) To the Contractor**

AT&T CORP.  
One AT&T Way,  
Bedminster, New Jersey 07921-0752  
ATTN: Master Agreement Support Team

**Regional Office Contact Info:**

7300 CORP CTR DR - BLDG 8  
Room 700  
Miami, FL 33126

Attention: Esther Martin, Account Manager  
Phone: (305) 569-7274  
Fax: (866) 357-1150  
E-mail: [em6388@att.com](mailto:em6388@att.com)

and,  
Attention: Espe Diaz-Bello, Area Director – Government & Education  
Phone: (305) 569-7236  
Fax: (866) 403-5934  
E-mail: [ed6554@att.com](mailto:ed6554@att.com)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under applicable Pricing Schedules (including CSAs), Tariffs, Guidebooks and applicable Service Guides. These stated pricing conditions shall apply in all general cases except where otherwise mutually agreed on the basis of good faith negotiations.

Except for taxes and fees where applicable (if any), the County shall have no obligation to pay the Contractor any additional sum in excess of these amounts, except for a change and/or modification to the Contract, Special Project or County work order, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

**ARTICLE 8. PRICING**

Except as stated below, prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof,

- a) Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule shall remain fixed and firm until the end of the Pricing Schedule Term, except where negotiations, special pricing additional available discounts, or applicable credits would provide the County more favorable rates, as mutually agreed upon. At the end of a Pricing Schedule Term, the County will have the option to either: (a) cease using the Service (which will require the County to take all steps required by the Contractor to terminate the Service); or (b) continue using the Service under a month-to-month service arrangement. Unless a Pricing Schedule states otherwise, during any month-to-month service arrangement, the prices, terms and conditions in effect on the last day of the Pricing Schedule Term will continue until changed by the Contractor on 60 days' prior notice to the County.
- b) Upon written request not more than once in any 12 month rolling period, County may request in writing that AT&T conduct a review of County's total purchases to determine whether County is receiving, in the aggregate, rates, terms and conditions that are at least equal to those of similarly situated county customers within the State of Florida. The factors that will be used to make this determination include: quantity of services, terms of services, billing level associated with the total combined services, geographic locations of services, mix of services and available facilities for the AT&T services. After such review, if AT&T and County agree upon revisions to a Pricing Schedule(s) that are a mutually acceptable alternative, then AT&T will prepare the contractual document(s) for customer signature. By way of example and not limitation, such alternative may



include changes in: recurring and/or nonrecurring charges, revenue and/or volume commitments, discounts, one-time credits and terms and conditions of service subject to legal and regulatory considerations, including but not limited to Florida Statute 364. If AT&T and County mutually agree that the County's rates, terms and conditions are not as favorable in the aggregate as those AT&T offers to a similar situated county customer in the State of Florida but AT&T and County cannot agree upon mutually acceptable revisions to the existing Pricing Schedule(s), then County's termination liabilities under this agreement will be waived prospectively for the remaining term of the Agreement.

- c) Additional Charges and Taxes - Prices set forth in a Pricing Schedule are exclusive of, and the County will pay, all applicable current and future taxes (excluding those on the Contractor's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from the County's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent the County provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent the County is required by law to withhold or deduct any applicable taxes from payments due to the Contractor, the County will use reasonable efforts to minimize any such taxes to the extent allowed by law or treaty, and the County will furnish the Contractor with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that the Contractor may claim any applicable credit. The County may request the Contractor shall furnish such evidence as may be reasonably required for determining the applicability of the additional charges or taxes. Additionally, the Contractor agrees to provide current information and assistance to the extent allowed on provisions that would exempt the County from any additional charges, mandated taxes or fees. Disputes arising on the basis of such charges shall be settled in accordance with provisions in Article 9.

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor.

All invoices, or other documents reasonably required by the County, shall show the County's contract number or PO number where applicable. Invoices issued by the Contractor shall have a unique payment period or billing period by account designation.

Where available, the Contractor agrees to provide invoicing in electronic form at no cost. This shall be considered a standard invoicing requirement by the County during the term of this contract. The Contractor will make a reasonable effort to inform the County as to the availability of electronic invoicing on new services being added to the contract when available. It is at the County's sole discretion, to provide written authorization to Contractor indicating an exception to this practice for new services being offered. Electronic invoicing shall also include all software or tools generally made available by Contractor for standard use to access, download or allow the County to print said documentation as may be required for payment purposes. Contractor will quote the County any charges that may be incurred for additional e-billing capabilities. In accordance with Title 47-Telecommunications, of the Code of Federal Regulations (C.F.R) Sections 64.2400 and 64.2401, the Contractor shall provide invoicing (billing) documents that are in compliance with the regulations as stated above.

To help accomplish this objective, the Contractor will provide online resources, including but not

limited to "e-Bill" tools currently located at [www.businessdirect.att.com](http://www.businessdirect.att.com). These basic online tools shall be provided at no cost to the County and for all authorized County User Departments.

It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The Contractor agrees to provide the County. The time at which payment shall be due to small businesses shall be forty-five (45) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from forty-five (45) days after the due date at the rate of one percent (1%) per month on the unpaid balance, which amounts will be included, on subsequent monthly Service invoices unless the Contractor has been otherwise notified in writing of a billing dispute by the County.

Invoices and associated back-up documentation shall be submitted in duplicate, except where agreed provisions for electronic billing shall apply, by the Contractor to the County as follows:

Miami-Dade County  
Enterprise Technology Services Department (ETSD)  
Budget & Accounting Manager  
5680 SW 87<sup>th</sup> Ave  
Miami, Fla. 33182

Attention: Yinka Majekodunmi, Finance Manager  
Tel: (305) 596 8041  
Fax: (305) 596-7696  
E-Mail: [ymajeko@miamidade.gov](mailto:ymajeko@miamidade.gov)

The County may at any time designate a different address or/and contact person and by giving written notice to the other party. Based on prevailing Administrative Order, the County also reserves the right to designate or delete, in writing, additional points of contact in other authorized County departments, or related agencies, other than named below where payment and billing activity may take place independent of ETSD.

Miami-Dade County  
Aviation Department (MDAD)  
Finance Division  
PO Box 526624  
4331 NW 22<sup>nd</sup> Street  
Building 3030  
Miami, FL 33152-6624

Attention: Leon Cuellar  
Tel: (305) 876-8498  
E-mail: [lcuellar@miami-airport.com](mailto:lcuellar@miami-airport.com)

Miami-Dade County  
Water & Sewer Department (WASD)  
3071 SW 38<sup>th</sup> Avenue – Room 403  
Miami, FL 33146

Attention: Vladimir Murad, Controller  
Tel: (305) 786-552-8001  
E-mail: [MURADV@miamidade.gov](mailto:MURADV@miamidade.gov)

**BILLING DISPUTES****Delayed Billing; Disputed Charges**

The County will not be required to pay charges for Services invoiced more than 24 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls of any type. If the County disputes a charge, the County will provide notice to the Contractor, specifically identifying the charge and the reason it is disputed within 24 months from the date the affected invoice was issued, or the County waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires. The Contractor and the County will use commercially reasonable efforts to identify and correct errors in a timely manner. Notwithstanding the foregoing, the County may seek repayment of any charges paid that are determined to be invalid as a result of an internal audit process performed at the discretion of the County under the provisions stated in Article 17. The County will pay Contractor all undisputed billed charges without deduction, set-off or delay, except where provisions of where existing State of Florida statutes or other legislation prevails.

Consistent with CFR Section 64.2401, the Contractor agrees to provide reasonable assistance to the County in the proper identification of charges for services by 3<sup>rd</sup> party providers that may be the source of an identified billing dispute.

Bona fide disputes concerning invoices shall be addressed by the appropriate Contractor's billing dispute center pursuant to Contractor's established methods and procedures, after the dispute is referred to the billing dispute center by either the County or the County's account team. If the dispute cannot be resolved by the billing dispute center within 30 days from the referral to the billing dispute center, the dispute shall be escalated to the parties' representatives as specified below. Payment of such disputed charges will not be considered overdue pending investigation by the Contractor.

<b>AT&amp;T</b>	<b>COUNTY</b>	<b>TIME TO ADDRESS</b>
Sales Manager	Procurement Supervisor and/or Finance Manager	30 days
Executive Director	Division Director and/or Department Director and County Chief Information Officer (CIO)	15 days

**Review of Documents: Disputed Charges**

- a) Subject to the Contractor's reasonable security requirements, and not more than once every twelve (12) months, the County may, review the Contractor's relevant billing records for a period not to exceed the preceding 12 months, for the purpose of assessing the accuracy of the Contractor's invoices to the County. The County may employ such assistance as it deems desirable to conduct such reviews, but may not employ the assistance of any entity that derives a substantial portion of its revenues from the provision of services that are substantially similar to the Services provided hereunder or any person who has previously made prohibited use of Contractor's proprietary Information. Such reviews by County staff shall take place at a time and place agreed upon by the parties. The County's normal internal invoice reconciliation procedures shall not be considered a review of the Contractor's relevant billing records for purposes of this Article 17.

- b) The Contractor shall promptly correct any billing error that is revealed in a billing review, including refunding any overpayment by the County in the form of a credit as soon as reasonably practicable under the circumstances.
- c) The Contractor shall cooperate in any County billing review, providing the Contractor billing records as reasonably necessary to verify the accuracy of the Contractor's invoices. The Contractor may redact from the billing records provided to the County any information that reveals the identity or non-public information of other customers of the Contractor or other Confidential Information of the Contractor that is not relevant to the purposes of the review.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

**Subject to the provisions of Articles 26 ("Disclaimers and Limitations of Liability") and 27 ("Patent and Copyright Indemnification"),** the Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities (**"the Indemnitees"**) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors, except that the Contractor shall not be liable for any liability loss or damage resulting solely from the negligent or willful acts or omissions of the Indemnitees.

The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Contractor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount of **\$1,000,000** combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the work, in an amount of **\$500,000** combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in the amount of **\$5,000,000** per claim or wrongful act and in the aggregate based on annual policy renewal period.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

**ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder, for performance deemed as unsatisfactory, as long as it is not based on an unlawful discrimination as referenced in Article 34 (Non-Discrimination). The County and Contractor agree that any internal employment action taken, including termination or demotion, is at the Contractor's complete and absolute discretion, and that removal of an employee from a County project does not bind or recommend any further employment action on the part of the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels if Contractor and County mutually determine staffing levels to be inappropriate or to replace any of its personnel if any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

**ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

**ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

**ARTICLE 14. DISPUTE RESOLUTION AND AUTHORITY OF COUNTY'S DESIGNATED PROJECT MANAGER****1) CONTRACT SERVICES AND EQUIPMENT PURCHASES**

For disputes other than billing disputes, involving regulated or non-regulated services and equipment purchases, prior to the initiation of any action or proceeding under this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiations between their respective representatives having decision-making authority. If the designated representatives cannot resolve the dispute, then the dispute shall be escalated to the County's Chief Information Officer or designee and the AT&T Sales Manager, for their review and resolution. If the dispute is not resolved at that level, the dispute shall then be escalated to the County Manager or designee and the AT&T Executive Sales Director for their review and resolution. If the dispute cannot be so resolved, then either party may initiate formal proceedings; however, formal proceedings may not be commenced until the earlier of:

- (i) the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely; or
- (ii) thirty (30) days after the initial request to negotiate such dispute; or
- (iii) thirty (30) days before the statute of limitations governing any cause of action relating to such dispute would expire.

**2) SPECIAL PROJECTS, INFRASTRUCTURE EXPANSION OR SYSTEM UPGRADES**

During the term of this Contract, and any renewal or extensions thereof, the County may elect to request that Contractor assist in special projects for the expansion of, or upgrades to, the County's current telecommunication network infrastructure. This type of project requires a detailed Statement of Work, normally covered by formal County Purchase Order, and will typically require the County to assign a specific Project Manager for the duration of the Project. Under said conditions, the County and Contractor will mutually agree as follows:

- a) The Contractor hereby acknowledges that the County's Project Manager is authorized to determine, in the first instance, the County's position on all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement, including without limitations: questions as to the value, acceptability and fitness of the Services to the County; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Statement of Work; and claims for damages, compensation and losses.

- b) The Contractor shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order, regardless of whether the Contractor agrees with the Project Manager's determination or order. Where it is deemed critical to County operations that advance orders need to be given orally, these orders will be reconfirmed in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve any difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide the County's position on all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive and final as to the County's position thereupon. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

**ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of



any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

**ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Agreement. The Contractor and its subcontractors shall retain such records for a period of three (3) years after the closing of the County Fiscal Year (FY) during which the provision of any goods or services were provided by the Contractor, except where the prevailing Florida Laws would otherwise prevail.

**ARTICLE 17. AUDITS**

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, for a period of three (3) years after the end of the County FY period under which the provision of goods or services were provided and pursuant to the terms below, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records which apply to all matters directly related to the County under. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to goods or services the Contractor has provided to the County hereunder.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal or in connection with Special Work Orders or Projects, or other services being provided under this Agreement, the Contractor must notify the County in writing for the substitution at least ten (10) business days prior to effecting such substitution.

**ARTICLE 19. ASSIGNMENT**

Neither party shall assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the other party, which consent shall not be reasonably withheld or delayed.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

The following provisions shall prevail in accordance with prevailing County Ordinances including but not limited to 97-35 Fair Sub-contracting Practices and 97-104 Sub-contractor/Supplier Listing and would apply during the term of this contract and any renewal or extensions thereof, when the County has elected to request Contractor to assist on special projects for expansion or upgrades to the current telecommunication network infrastructure

- a) If the Contractor will cause any part of this Agreement to be performed by a

Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between the Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations and the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

In such case the parties may negotiate in good faith a substitute provision for such invalid, illegal or unenforceable provision.

**ARTICLE 23. TERMINATION AND/OR SUSPENSION OF SERVICES**

- a) This Agreement may be terminated, or an affected Service may be suspended, upon reasonable notice as follows:
- i. By either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.
  - ii. By either party in the event the other party: (1) attempts to meet its contractual obligation through fraud, misrepresentation or material misstatement; (2) commits a fraud upon another party in performing its obligations under this Agreement or in utilizing one or more services provided under this Agreement - (3) violates applicable Federal, State or local laws in performing its obligations under this Agreement or in utilizing the Services provided under this Agreement or (4) fails to perform or observe any material term or condition of this Agreement, including non-payment of charges. In the event of non-payment for an affected service, Contractor will notify the County of the intent to suspend, where possible, the affected Service on a specified date no less than fifteen (15) days prior to such intent to suspend. Such failure to remedy, by the County within fifteen (15) days after suspension by the Contractor, will result in termination of the affected services.
  - iii. By the County, in the event the Contractor revises a Service Publication and the revision has a materially adverse impact on the County, and the Contractor does not effect revisions that remedy such materially adverse impact within 30 days after notice from the County. However, a revision to a Service Publication will not be considered materially adverse to the County if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change effects a charge imposed under Article 8(b) (Additional Charges and Taxes).
  - iv. By the Contractor (1) if the County, after notice as provided under Article 6 of this Agreement, and in accordance with standard AT&T policy and procedures of their Network Operations Center (NOC), of an abuse or misuse of the Contractor's network or Service or interference with another Customer's use of the Contractor's network or Services fails to cease such actions within five (5) days of such notice or such shorter time as may be warranted by the Contractor to the County under the circumstances or (2) the Contractor encounters any Hazardous Materials at a Site where the Contractor is to install, maintain or provide Services. In the latter case, the Contractor may suspend performance until the County removes and remediates Hazardous Materials at the County's expense in accordance with applicable law and covered under section b) of Article 45. Prompt failure to comply by the County will

result in termination of the affected services.

- v. By the Contractor in the event that the County fails to rectify a violation of the Acceptable Use Policy (AUP) within 5 days after receiving notice from the Contractor. In such case, the Contractor may only suspend the portions of the Service affected by the County's violation. The Contractor has the right, however, to suspend or terminate the applicable portion of the Service immediately when: (i) the Contractor's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) the Contractor is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) the Contractor reasonably determines: (a) that it may be exposed to sanctions, liability, prosecution, or other adverse consequences under applicable law if the Contractor were to allow the violation to continue; (b) that such violation may cause harm to or interfere with the integrity or normal operations or security of the Contractor's network or networks with which the Contractor is interconnected or interfere with another customer's use of the Contractor's Services or the Internet; or (c) that such violation otherwise presents imminent risk of harm to the Contractor or the Contractor's customers or their respective employees.

- vi. By the County in the event the County or any of its departments exercises its budgetary discretion to reduce or eliminate the necessary appropriations or funding for the Services provided under a Pricing Schedule due to changing business conditions. In such event, the County may terminate the Pricing Schedule without liability upon the following conditions: (i) the County has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite the County's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) the County has negotiated in good faith with the Contractor to develop revised terms, an alternative payment schedule or a new Pricing Schedule to accommodate the County's budget. The County must provide the Contractor thirty (30) days written notice of its intent to terminate a Pricing Schedule under this Article. Termination of a Pricing Schedule for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If the County terminates a Pricing Schedule under this Section, the County agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges.; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Pricing Schedule Term unless the Contractor declines a request by the County to the Contractor to obtain the Services through the Price Schedule as it existed at the time of termination.

- vii Withdrawal of Services - Notwithstanding that a Pricing Schedule may commit the Contractor to provide a Service to the County for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, the Contractor may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where the Contractor generally discontinues providing the Service or Service Component to similarly situated customers.

b) Effect of Termination

- i. Termination by either party of a Service does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service, will not affect the rights and obligations of the parties regarding any other Service.

- ii. If a Service or Service Component is terminated, the County will pay all amounts incurred prior to the effective date of termination. If the County terminates a Service or Service Component prior to the date the County's obligation to pay for Services begins as provided in Article 9 (Method and Times of Payment), the County will reimburse the Contractor for time and materials incurred prior to the effective date of termination. In either case, the County will reimburse the Contractor for any third party charges resulting from the termination that are not reasonably avoidable.
- iii. The Minimum Payment Period in any Pricing Schedule will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if (1) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component, and (2) the upgrade is not

**c) Termination Charges**

- i. The County will not be liable for the Termination Charges set forth in Article 23(b) if: (1) the County terminates this Agreement or an affected Service or Service Component pursuant to Articles 23 a(i), 23 a(ii) (if the termination is due to the Contractor's breach), 23 a(iii) or 23a(vi); or (2) AT&T terminates a Service pursuant to Article 23(iv) or AT&T withdraws a Service pursuant to Article 23(vii),
- ii. The County shall not be liable for any termination charges except as set forth in this Article, provided that the County shall be liable for all termination charges as set forth in a Pricing Schedule.

**d) Suspension of Authority to Add Services**

The Contractor shall only deal with the County through those persons specifically authorized in accordance with County Administrative Order (AO) 5-5. Such authority may be amended, at the County's sole and absolute discretion, by providing notice to the Contractor in writing as provided in this Agreement.

Affiliated County agencies and the Public Health Trust may seek access to this contract for the services defined. These agencies and the Public Health Trust would be responsible for providing such written authorization to the Contractor as to the name and position, for those individuals permitted by their internal guidelines to deal directly with the Contractor for said services.

All additional Services, supplemental agreements or amendments to this Agreement approved by an unauthorized individual shall be null and void and, notwithstanding any other provision of this Agreement or a Price Schedule, any such Service provided by Contractor shall be at no cost to the County.

**ARTICLE 24 – Termination of Infrastructure or System Upgrades**

- (a) **Termination for Convenience** – With respect to any Pricing Schedule, Statement of Work, purchase order or change order associated with a special project for infrastructure or system upgrades ("Special Project"), the County may at any time, in its sole discretion, with or without cause, terminate such Special Project by written notice to the Contractor and in such event:

- i. The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

- stop work on the date specified in the notice ("the Effective Termination Date");
  - take such action as may be necessary for the protection and preservation of the County's materials and property;
  - cancel orders;
  - assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not reasonably capable of use except in the performance of this Agreement or have been specifically developed for the sole purpose of this Agreement and not incorporated in the Special Project; and
  - take no action which will increase the amounts payable by the County for the Special Project; and
- ii. In the event that the County exercises its right to terminate such Special Project pursuant to this subsection, the Contractor will be compensated for the:
1. portion of the work on the Special Project completed in accordance with the applicable Pricing Schedule, Statement of Work, purchase order or change order up to the Effective Termination Date; and
  2. non-cancelable deliverables that are not reasonably capable of use except in the performance of such Special Project or have been specifically developed for the sole purpose of such Special Project but not incorporated in the work.
- b) Termination for Default - An event of default with regard to a Special Project shall mean the failure to perform or observe any material term or condition of the applicable Pricing Schedule, Statement of Work, purchase order or change order. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a material breach, an event of default, shall include the following:
- i. the Contractor has not performed Work or delivered Services on a timely basis;
  - ii. the Contractor has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - v. the Contractor has failed to provide "adequate assurances" as required under (vi) below;
  - vi. When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

1. treat such failure as a repudiation of the Pricing Schedule, Statement of Work, purchase order or change order applicable to the Special Project;
  2. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Work or Services or any part thereof either by itself or through others.
- vii. If an event of default occurs and is not cured in accordance with the provisions of Article 24(b)(viii), the defaulting party shall be liable for all damages resulting from the default to the extent set forth in Article 26(b)(Limitations of Liability). The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction, after it has exhausted the applicable dispute resolution procedures set forth in Article 14.
- viii. If an event of default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or the identified Special Project may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period that the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Special Project if the Contractor has not cured the default.

**ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

- a) If an event of default occurs and is not cured in accordance with the provisions of Article 24(b)(viii), the defaulting party shall be liable for all damages resulting from the default to the extent set forth in Article 26(b)(Limitations of Liability). The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction, after it has exhausted the applicable dispute resolution procedures set forth in Article 14.
- b) If an event of default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or the identified Special Project may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period that the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Special Project if the Contractor has not cured the default.

**ARTICLE 26. DISCLAIMERS AND LIMITATIONS OF LIABILITY**

- a) Disclaimer of Warranties.

THE CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR

WARRANTY OF MERCHANTABILITY, FURTHER, THE CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT THE CONTRACTOR'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, COUNTY'S DATA AND CONFIDENTIAL INFORMATION.

b) Limitation of Liability.

i. THE CONTRACTOR'S ENTIRE LIABILITY, AND THE COUNTY'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY COUNTY'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO THE COUNTY FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO THE CONTRACTOR.

ii. ARTICLE 26(b) WILL NOT APPLY TO:

- (a) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY THE CONTRACTOR'S NEGLIGENCE;
- (b) BREACH OF ARTICLE 28 (Confidentiality) or ARTICLE 36 (Press Release or Other Public Communication);
- (c) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER ARTICLE 10 (Indemnification and Insurance) and ARTICLE 27 (Patent and Copyright Indemnification); OR
- (d) DAMAGES ARISING FROM THE CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

iii. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

c) Disclaimer of Liability

THE CONTRACTOR WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY THE CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY COUNTY OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR



TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF COUNTY'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

- d) Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Article 26 will survive failure of any exclusive remedies provided in this Agreement.

**ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor warrants, to the Contractor's best knowledge and belief, that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County against all compensatory damages and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability that a court may finally award to the extent the claim alleges that a Service provided to County under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from:
- i. the County's, its Affiliate's or a User's content;
  - ii. modifications to the Service by the County, its Affiliates or third parties, or combinations of the Service with any services or products not provided by the Contractor;
  - iii. Contractor's adherence to County's or its Affiliate's written requirements; or
  - iv. use of the Service in violation of this Agreement

The Contractor shall also defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation, at the Contractor's option, to (i) modify the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

- d) The County agrees at its expense to defend or settle any third-party claim against the Contractor, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory damages that a court may finally award against such parties to the extent the claim: (i) arises out of the County's, or a User's access to, or use of, the Services and the claim is not the responsibility of the Contractor under Article 27(a); (ii) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Article 27(a) or (iii) alleges a breach by County, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.
- e) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- f) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- g) The party seeking defense or settlement of a third party claim under this Article 27, will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense; but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Article 27.

**ARTICLE 28. CONFIDENTIALITY**

- a) Confidential Information means: (i) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing or as further defined hereunder; and (ii) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.
- b) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or in which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers

for any purpose other than performance under this agreement and/or for the benefit of the County, unless required by law.

- c) The forgoing notwithstanding, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- d) The Contractor shall advise its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- e) Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (i) be held in confidence; (ii) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of the Contractor, the ability to utilize the County's Confidential Information in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (iii) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Article 28), or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process). The restrictions in this Article will not apply to any information that: (i) is independently developed by the receiving party; (ii) is lawfully received by the receiving party free of any obligation to keep it confidential; or (iii) becomes generally available to the public other than by breach of this Agreement.
- f) Each party is responsible for complying with the privacy laws applicable to its business. If the County does not want Contractor personnel to comprehend County data to which they may have access in performing Services, the County should encrypt such data so that it will be unintelligible. Until directed otherwise by the County in writing, if the Contractor designates a dedicated account representative as the County's primary contact with the Contractor, the County authorizes that representative to discuss and disclose the County's proprietary network information (CPNI) to any employee or agent of the County without a need for further authentication or authorization.
- g) Notwithstanding the foregoing, the County is subject to Florida's Pubic Records laws as codified in Chapter 119 of the Florida Statutes, the County's compliance with Florida Public Records laws, or good faith attempt to comply with Florida's Pubic Record laws shall not be considered a breach of this Agreement.

**ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the Contractor's employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

**ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder and furnished by the Contractor to the County and created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement.

The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed

Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in a Pricing Schedule or Purchase Order.

**ARTICLE 31. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission and Public Trust hotline at (786) 314-9560 or information that may be available at: <http://www.miamidadeethics.com>.

**ARTICLE 32. INSPECTOR GENERAL REVIEWS**

**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter

(1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements.

***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award. Any Services that are noted above that may become non-exempt, will require Contractor to review and agree to operational supportability.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**Exclusions of Charges.** County agrees to work cooperatively with the Contractor to implement a payment mechanism that will exempt 3<sup>rd</sup> party charges that are verified to be "pass through" in nature. These charges shall include but are not limited to Dade County Ordinance #83-3

("Manhole Ordinance"), FCC or other mandated regulatory fees, 3<sup>rd</sup> party communication services or charges, where provisions of this County Ordinance should not be applied.

In accordance with the requirements for the collection of fees under Articles 32, the Contractor hereby agrees to provide the County billing documentation in a form that will clearly delineate and summarize amounts applicable for Ordinances 99-63 on each invoice presented. These amounts will be shown as individual "IG" credits in the invoice summary section. Upon request, to comply with internal review requirements, the County will be provided with a summary of charges where this ordinance did not apply.

**Contractor Compliance.** If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with this Agreement.

All incumbent services/charges currently provided by the Contractor are eligible for inclusion as to the application of Ordinance 99-63 with the exception of those items deemed exempt from this ordinance as set forth under this Article.

All services the County may elect to purchase after the Effective Date of this Agreement, will be evaluated on an individual case basis, as to the operational supportability and the process for collections of this Ordinance fees, and will be noted in the Contractors Pricing Schedules.

**ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Environmental Protection Agency (EPA), as applicable to this Contract.
- c) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- d) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

**ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities (ADA) Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95 or any revisions the referred ADA legislation as updated under the ADA Amendments Act of 2008 (P.L. 110-325). If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

**ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards



applicable under this Agreement and those provided by statute, the stricter standard shall apply.

- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work or Services being performed hereunder or the terms of this agreement, unless the Contractor first obtains the written approval of the County. Such approval may be withheld by the County if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply.

**ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

County represents that it is subject to the requirements and regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which requires the County to protect against the improper use or disclosure of Protected Health Information (as defined in 45 CFR 160.103) ("PHI"). It is the County's responsibility to implement the security methodologies it deems appropriate to secure PHI. The Services provided hereunder do not require the

disclosure to or use by AT&T of PHI, and AT&T will take reasonable measures to prevent its employees and agents from obtaining unauthorized access to the County's PHI. In the event that AT&T obtains access to the County's PHI in providing Services under this Agreement, AT&T will treat all such data as Confidential Information.

**ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any Agreement resulting from this solicitation and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Agreement shall invoice the Agreement price and shall accept as payment thereof the Agreement price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

**Exclusions of Charges.** County agrees to work cooperatively with the Contractor to implement a payment mechanism that will exempt 3<sup>rd</sup> party charges that are verified to be "pass through" in nature. These charges shall include but are not limited to Dade County Ordinance #83-3 ("Manhole Ordinance"), FCC or other mandated regulatory fees, 3<sup>rd</sup> party communication services or charges, where provisions of this County Budget Ordinance should not be applied.

In accordance with the requirements for the collection of fees under Article 40, the Contractor hereby agrees to provide the County billing documentation in a form that will clearly delineate and summarize amounts applicable for Ordinance 03-192 on each invoice presented. These amounts will be shown as individual "UAP" credits in the invoice summary section. Upon request, to comply with internal review requirements, the County will be provided with a summary of charges where these two respective ordinances did not apply.

**Contractor Compliance.** If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with this Agreement.

All incumbent services/charges currently provided by the Contractor are eligible for inclusion as to the application of Ordinance 03-192 with the exception of those items deemed exempt as set forth under this Article.

All services the County may elect to purchase after the Effective Date of this Agreement will be evaluated on an individual case basis, as to the operational supportability and the process for collections of this Ordinance fee, and will be noted in the Contractors Pricing Schedules.

**ARTICLE 41. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 42. E-RATE**

If and to the extent that any agency of the County intends to seek funding through the Federal Universal Fund program known as "E-rate" for some or all of the Services or Service Components purchased under this Agreement, the terms and conditions of Attachment D ("E-rate Rider") shall apply and the applicable County agency shall execute such rider as appropriate. County requests AT&T assistance where allowed by law.

**ARTICLE 43. CONTRACTOR EQUIPMENT**

Services may include use of certain equipment owned by Contractor that is located at the Site ("Contractor Equipment"), but title to the Contractor Equipment will remain with Contractor. The County must provide electric power for the Contractor Equipment and keep the Contractor Equipment physically secure and free from liens and encumbrances.

The County will bear the risk of loss or damage to the Contractor Equipment (other than ordinary wear and tear), where such equipment is located on County property and except to the extent caused by the Contractor or its agents.

**ARTICLE 44. SOFTWARE**

Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software provided in connection with the Services remains with the Contractor or its supplier. The County must comply with all such terms and conditions, which shall take precedence over this Agreement as to such software, subject to the provisions of Florida law, including but not limited to chapter 119 of the Florida Statutes.

**ARTICLE 45. COUNTY'S COOPERATION**

- a) Access Right – The County will in a timely manner allow the Contractor to access property and equipment that the County controls as reasonably required to provide the Services, and the County will assist the Contractor in obtaining timely access to property that the County does not control (other than public property) as reasonable required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as reasonably necessary for the County's connection to the Contractor's network. The County must provide the Contractor timely information and access to the County's facilities and equipment as the Contractor reasonably requires to provide the Services, subject to the County's reasonable security policies. The County will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way) as may be negotiated by the parties.
- b) Safe Working Environment – The County will ensure that the location at which the Contractor installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. The Contractor does not handle, remove or dispose of Hazardous Materials, and the Contractor has no obligation to perform work at a location that is not a suitable and safe working environment. The Contractor will not be liable for any Hazardous Materials.

**ARTICLE 46. FORCE MAJEURE**

Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

**ARTICLE 47. AMENDMENTS AND WAIVERS**

Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

**ARTICLE 48. INJUNCTIVE RELIEF**

Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

**ARTICLE 49. COMPLIANCE WITH LAWS**

Each party will comply with all applicable laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction.

**ARTICLE 50. NO THIRD PARTY BENEFICIARIES**

This Agreement is for the benefit of the County and the Contractor, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**ARTICLE 51. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement. Except as provided in Article 44 (Software), this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

The County has requested that the Contractor sign this Master Agreement first, and the Contractor has agreed to do so. This Agreement as signed by the Contractor, shall be binding upon Customer as of the effective date. Contractor will begin implementing the Agreement when a fully signed copy is returned by Customer. Further, any and all changes made to the Agreement after signature by the Contractor shall be void and of no effect, unless and until incorporated into a written amendment to this Agreement signed by both Parties, except for changes expressly authorized by the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Corporate Secretary

Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney

SBD PROJECT FILE - AUG 2011



Dept. of Small Business Development  
Project Worksheet

Project/Contract Title: LOCAL TELECOM SERVICES - VOICE AND DATA  
Project/Contract No: RQET1000012  
Department: VARIOUS  
Estimated Cost of Project/Bid: \$70,000,000.00  
Funding Source: INTERNAL SERVICE FUNDS  
RC Date: 08/18/2010  
Item No: 2 -04  
Resubmittal Date(s):

Description of Project/Bid: To establish a replacement Bid Waiver contract for Countywide Local Telecom Voice & Data Services with AT & T Corporation. This will replace current contract R864-02-3. Services acquired will be managed by ETSD based on Administrative Order (A.O.) 5.5. These services will include but are not limited to County support of Business and PBX Trunk Lines, Centrex, DSL, Frame Relay, Metronet Ethernet, Analog Data 1-800 for 311 call center, T-1 Broadband circuits and Reverse 911 services for Miami Dade Police Department. Contract terms are five (5) years with three (3) one year options to renew.

<u>Measure</u>	<u>Program</u>	<u>Goal Percent</u>
No Measure	SBE	

NO MEASURE - BID WAIVER (AT & T - BELL SOUTH).  
An analysis of the trades required for this contract, as well as an analysis of the availability of SBE, revealed insufficient availability. (5 SBE certified firms).



Commodity Codes:  
725-56 Telephone Systems (2-60 Stations) Electronic Key & 1A2.  
725-57 Telephone Systems (Over 60 Stations).

<u>Subtrade</u>	<u>Cat.</u>	<u>Estimated Value</u>	<u>% of Items to Base Bid</u>	<u>Availability</u>
	SBE	\$0.00		5
<b>Total</b>		\$0.00		

Living Wages: YES ☐ NO ☒  
Responsible Wages: YES ☐ NO ☒

Responsible Wages and Benefits applies to all construction projects over \$100,000 that do not utilize federal fund. For federally funded projects, unless prohibited by federal or state law or disallowed by a governmental funding source, the HIGHER wage between Davis Bacon and Responsible Wages and Benefits shall apply.

Tier 1 Set Aside \_\_\_\_\_  
Set Aside \_\_\_\_\_ Level 1 \_\_\_\_\_ Level 2 \_\_\_\_\_ Level 3 \_\_\_\_\_  
Trade Set Aside (MCC) \_\_\_\_\_ Goal \_\_\_\_\_ Bid Preference \_\_\_\_\_  
No Measure ☒ Deferred \_\_\_\_\_ Selection Factor \_\_\_\_\_

 08/18/10  
Chairperson, Review Committee Date  
 8/18/10  
County Manager / Designee Date